

April 17, 2017

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re:** Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, WC Docket No. 16-106

Dear Ms. Dortch:

On Thursday, April 13, 2017, Chris Lewis and Dallas Harris of Public Knowledge, Neema Guliani and Nathaniel Turner of the American Civil Liberties Union, Eric Null of New America's Open Technology Institute, and Natasha Duarte of Center for Democracy and Technology (collectively "advocates") met with Nick Degani, senior counsel to Chairman Pai. We discussed how the Federal Communications Commission (FCC) plans to enforce Section 222 and consumer privacy protections more broadly in the wake of Congress' resolution of disapproval of the FCC's broadband privacy rules.

First, advocates argued that the FCC should strongly enforce Section 222 of the Communications Act. Strong enforcement will help protect consumers against internet service providers (ISPs) using and disclosing private information in ways consumers don't know about and have little control over. We also asked for clarity regarding whether Section 201's prohibition against unjust practices would prevent an ISP from conditioning service on a customer giving consent for the provider to sell their sensitive information, or on similar "pay for privacy" schemes.

Second, advocates stated that the most optimal way to protect ISP customer privacy is to provide clear, comprehensive guidance on what the Commission would view as unacceptable ISP behavior, as the FCC did last October. For example, how does the FCC now define Customer Proprietary Network Information (CPNI)? Moreover, how does the Commission view pay-for-privacy regimes that attempt to coerce consumers into giving up their privacy? Clear ex ante guidance would help consumers avoid harm before it happens and help ISPs know what practices are acceptable. Consumers should not have to wait until they are the victims of harm before the FCC takes action to protect privacy.

Statements from Chairman Pai indicating he wants to return privacy authority to the Federal Trade Commission (FTC) has created confusion over how the FCC plans to enforce Section 222. We pressed Mr. Degani to explain how the Chairman's goal of returning privacy authority to the FCC informs the FCC's decision whether, if at all, to take enforcement action against ISPs for their privacy practices in the meantime? Commission-level guidance or, at a minimum,

Enforcement Bureau guidance that addresses some specific practices and how the FCC would respond to those practices, would help alleviate this confusion. Furthermore, current Enforcement Bureau guidance from 2015 is insufficient because it required mere “good faith” efforts to comply with Section 222, a much weaker standard than what Section 222 requires.

Third, advocates highlighted the lack of meaningful competition between ISPs in many parts of the country, which underscores the need for strong privacy protections. Consumers that do not like their ISP’s privacy practices cannot, in many circumstances, vote with their wallets by choosing another provider. This means that many consumers, particularly those who may already be in vulnerable communities, may have no option but to accept the practices of the internet service provider.

In accordance with Section 1.1206(b) of the Commission’s rules, this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020.

Respectfully submitted,

/s/ Dallas Harris

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cc: Nick Degani